EXHIBIT 10

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

SUSANNA MIRKIN and BORIS MIRKIN,
Individually and on Behalf of All Others
Similarly Situated,

Plaintiffs,

vs. No. 18 Civ. 2949(ARR) (RER)

XOOM ENERGY, LLC and XOOM ENERGY
NEW YORK, LLC,

Defendants.

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VIDEOTAPED DEPOSITION OF

SEABRON ADAMSON

Tuesday, November 8, 2022

10:06 a.m.

Veritext

101 Arch Street

Boston, Massachusetts 02110

Laurie K. Langer, RPR

agreements. If you want to take that to be liability, liability I guess is a legal term. But -- so I am addressing issues related to the consistency of the, the rates and the sales agreements.
Q. Okay. And whether or not XOOM breached those provisions?
A. Well, I mean, again, "breach" seems a legal word. But whether it's -- whether the pricing was consistent with the, with the pricing required in the sales agreements.
Q. Okay. Is "breach" a word that you have difficulty with?
A. No, I just.
Q. You've worked in a lot of --
A. Yeah.
Q. -- litigation for a long time.
A. Sure. I just -- I don't know exactly what implications you're trying to put to that. I was just trying to describe clearly what I did, which I think is what's described here.
Q. I guess put differently, you are offering an opinion about whether or not XOOM complied with the pricing provisions of its sales agreement?
A. Yes.

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Q. Okay. And so are you also offering an opinion about how the pricing terms of the sales agreements should be interpreted?
A. No. I'm providing a -- my -- well, I'm providing my understanding of what it says and in the context of the, of electricity and gas markets and retail markets and how that works out. Obviously, I'm not offering a legal opinion on the language.
Q. Okay.
A. I'm offering my understanding based on knowledge of these markets of how these, how these work.
Q. Okay. You're not offering a legal interpretation of the pricing provisions in the XOOM sales agreement?
MR. WITTELS: Objection. I mean, I think he asked -- he just answered it, didn't he?
MR. MATTHEWS: Steve, please, no speaking objections today. Please.
MR. WITTELS: But it's the same question.
MR. MATTHEWS: "Objection form" is what's appropriate to say, as you have reminded me. Okay?
A. I am not offering a legal opinion.
Q. Okay. Were you asked to assume a particular interpretation of the pricing provisions?
A. No, not really. I mean, they're on the page.

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Q. Okay. So the third bullet point says that you have been asked, "to determine whether XOOM set its rates as required by the sales agreements."
Correct?
A. Yeah. The consistency, you know, the consistency from an economic and commercial point between the rates and, and, you know, how it -- how it -- how it describes, I think, the phrase that we'll get, we'll get around to today about the actual and estimated supply costs --
Q. Yep.
A. -- in the -- in the sales agreement.
Q. Right. That's -- that's where I was going next.
The sales agreement requires that rates be set, "based on XOOM's actual and estimated supply costs."
Right?
A. I don't have the phrasing in front of me, but that sounds right.
Q. We can do that. I'm not trying to --
A. Yeah. I mean -- I think that's --
Q. Bear with me one second.
MR. MATTHEWS: May I mark this as Exhibit 2.
(Deposition Exhibit No. 2 marked for identification.)

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Q. Okay. And, Mr. Adamson, does this appear to be a copy of the sales agreement you were referring to?
A. Yes, I think so. I mean, there were various, obviously various versions of these over time, but this looks like the one.
Q. This is the one that you analyzed --
A. Yes, I believe --
Q. -- in connection with preparing this report?
A. Yes, I believe so.
Q. Okay. And in connection with the assignment to determine whether XOOM set its rates as required by the sales agreements, can you direct me to the provisions that you looked at that relate to rate setting?
A. I mean, you know, obviously the -- the -- the primary one is in this top right box, starting "your rate."
Q. "Your rate for energy purchases will be a variable rate, per kilowatt hour, that may change on a monthly basis, plus taxes and fees, if applicable. Your monthly variable rate is based on XOOM's actual and estimated supply costs which may include but not be limited to prior period adjustments, inventory and balancing costs. You are responsible for all charges assessed and billed by your local utility for all

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Q. In doing that rate conversion, do you interpret that provision to mean that XOOM may include a margin in its rate?
MR. WITTELS: Objection.
A. I don't see that listed here. You know, it says, "actual and estimated supply costs." I don't see that here. Sort of as we said, I anticipated that was going to be kind of argued. I mean, when you have the reading here, I don't see that. It says, "actual and estimated supply costs," it doesn't talk about margin. I mean, so I think the most straightforward reading of that is it doesn't have margin in it.
Q. In your opinion XOOM may not include a margin in its rate based on that contract provision?
A. I would say it's actual -- I mean, if they -- if -- it just needs to -- it needs to be to actual and estimated supply costs. Which does not list here "margin."
Q. Mr. Adamson, I'll stipulate that the word "margin" is not in that provision.
A. Yes.
Q. You don't have to tell me that again.
A. Okay.
Q. I want to know, your interpretation is. You're

offering an opinion of what this provision means; yes?
A. Yeah, I'm offering what I think is a, you know, a relatively commonsensical commercial one. I'm -- my -- my ordinary reading of this is, you know, deal with supply costs and, and that's what it says.
Q. And does it mean that XOOM may include a margin on top of those supply costs?
MR. WITTELS: Objection.
A. They -- my kind of ordinary read of that is it doesn't say that, unless, unless they are -- it's not included in supply costs, it doesn't list that. And it's not a, you know, direct actual supply cost. That's what it says. So I think the answer to your question is no.
Q. Okay.
A. If you were to say it does, okay, that's different. That's a different view of the same thing.
Q. Okay. So if I said that rate setting provision that we've been looking at based on actual and estimated supply costs means that the rate will be consistent with costs plus an appropriate margin, you would disagree?
A. I mean, the first order based on it said what it says, yes. I mean, I -- I can -- I would guess you would probably argue that. Which I believe Mr. Coleman

has.
So I would, you know -- I imagine that that was, imagined that that was going to come up. I think -- I mean, whether, to the extent non supply costs margins are included really is something that the judge or the jury or whoever decides on this has to, has to opine on.
Q. Okay. Because you're not offering a legal interpretation?
A. I am not offering a legal interpretation.
Q. Okay. If I said that I interpret that phrase based on actual and estimated supply costs to mean that XOOM's rate will rise and fall with its supply costs, would you agree with that or disagree?
MR. WITTELS: Objection. By the way, when you say "you," you the lawyer? I don't know what you mean.
A. Sorry. Can you repeat the question.
Q. I say that when I, Matt.
A. Right. Okay. We get our pronouns right. Yeah. Okay.
Q. Read that pricing provision, specifically the phrase "based on XOOM's actual and estimated supply costs," I think that means that XOOM's rates will rise and fall with its supply costs. Would you agree with

that reading or disagree?
A. I think that is -- if the rate is determined from actual and estimated supply costs then that is likely to be true, but that doesn't seem to be sufficient to me to meet the requirement.
Q. What else would be required?
A. Well, again, as I -- as we tried to explain in that rebuttal report, moving together is a very weak measure of anything; right? So the real question is not, not just do things move together, but, I mean, obviously there are other elements of a mathematical relationship between moving together. I don't think moving together is sufficient to determine whether that's, quote, based on.
Q. So if it's not just that it moves together, --
A. Uh-huh.
Q. -- what else is required?
A. Well, --
MR. WITTELS: Object to the form.
A. -- as I indicated -- as we indicated in our rebuttal report, there needs to be an, an economically, you know, reasonable relationship between those two, because moving together, as I illustrated, and which, I think, you know, everyone can understand, doesn't, it

that is contained in the rate setting workbooks; right?
A. Yes. I think that's a -- that's a good shorthand description.
Q. The rate setting workbooks have columns --
A. Yes.
Q. -- for different components of supply costs; right?
A. Right. And they aggregate to this Total Cost Column, yes.
Q. Got it.
A. So that total cost is as -- is from XOOM's data.
Q. Got it.
A. That's not a defined by ESCO.
VIDEOGRAPHER: You're rubbing your microphone. Thanks. Pull it higher. Thanks.
A. (Indicating.) Okay. Thank you.
Q. So circling back to the statement in 23C. "XOOM set its rates much higher than and inconsistently with the company's 'total cost' reported in its rate setting workbooks."
What does "inconsistently with" mean in that context?
A. Well, it's, you know, substantially higher. You know, going back to your -- they also -- I mean, going

back to your point around moving together, they don't move together completely, but they are much, on average, substantially higher by, by a large amount than the total cost that XOOM self reported.
Q. Here's what I'm getting at. Is "inconsistently with" different than "much higher" or is it the same?
A. Largely together. I think.
Q. Largely the same?
A. Yeah.
Q. The fact that it was much higher made it inconsistent with?
A. Yes.
Q. Is that a fair way to say it?
A. Yes. And by an amount which is grossly different. So, you know, obvious to the naked eye.
Q. Okay. In terms of its relative --
A. Levels.
Q. -- level over cost?
A. Yes. On average, yes.
Q. You didn't do a correlation analysis of XOOM's supply costs to its rates; correct?
A. No. Because as I said, I don't find that is a particularly meaningful metric in this regard.
Q. But what I'm trying to understand in asking you

about this particular phrase, "much higher than and inconsistently with."
A. Uh-huh.
Q. Is whether you ascribe any particular meaning to "inconsistently with" that goes beyond the level of the rate being, in your words, much higher than the costs?
A. Well, this specific sentence is a comparison directly of the rates and total costs as reported by XOOM. So this is really just looking at two variables from their data. You know, what I think was intended to be implied here is it was much higher than on average by, by a very large amount and that, that made it inconsistent with total costs.
Q. Understood. Under the sales agreement could a variable rate be slightly higher than supply costs and be consistent with total costs?
MR. WITTELS: Can you read that back.
(Prior testimony read back.)
"Under the sales agreement could a variable rate be slightly higher than supply costs and be consistent with total costs?"
Q. Let me -- let me rephrase it. Under the sales

agreement --
A. Uh-huh.
Q. -- could the variable rate be slightly higher than total costs and still be consistent with total costs?
MR. WITTELS: Objection.
A. I think this takes us back to the discussion we already had about the margin and all of that. You know, if -- total costs, I mean, this is total costs as, as reported by XOOM as the sum, as you -- as you put it of all the supply costs. And, you know, to my first read, well, why aren't you charging your supply costs? So, you know, I was -- we were -- this sentence is just saying -- it's very different. I don't -- I'm not -- I wasn't trying to make any incredible narrow point, which I'm not sure I'm understanding.
Q. My point is here you have said it was inconsistent with total costs. The rate was inconsistent with total costs because it was "much higher;" right?
A. Yes.
Q. And so I'm just asking, in your opinion --
A. Uh-huh.
Q. -- would the rates still be inconsistent with

opinion.
MR. WITTELS: But usually if you're making a statement you're taking it from there.
MR. MATTHEWS: Well, thank you for that guidance. I'm learning a lot.
A. Well, I think it's probably around page....
Q. I'll find it for you. How about paragraph 23B and 54.
A. 54. Right. Okay. Yes. Okay. Sorry, can you repeat your question.
Q. Please, if you would, so we don't have any confusion, if you would read both of those paragraphs. And then I'll --
MR. WITTELS: Into the record, --
Q. -- proceed.
MR. WITTELS: -- or?
MR. MATTHEWS: No. No. Just to himself.
A. (Witness reviewing.) Okay.
Q. Okay. What -- you, generally speaking, opine with reference to those prior period adjustments that you were unable to substantiate whether XOOM considered them in setting its rates; is that a fair statement?
A. Yeah. I mean, we looked at the information in the rate setting workbooks, which was very extensive.

There didn't seem to be any determination, calculation, amounts or anything associated with prior period adjustments as expected. I'm -- I was really kind of expecting there to be, if you were making prior period adjustments, to have some calculation of those, which I never saw. So that's kind of just what it's a reference to.
Q. Got it. So you're saying because XOOM didn't memorialize it and document or a calculation that shows how it was factored in, you have no evidence that they considered it; is that fair?
A. Well, I'm saying I didn't, I didn't see any -- there was no data suggesting that that was ever calculated.
Q. Right.
A. And it seems to me that would be a calculation.
Q. There was testimony that it was considered; right?
A. I think there was testimony that it was considered and as I mentioned in paragraph 54, though, there was testimony -- well, there was testimony I believe that said, oh, it was part of this, what we considered in some very broad abstract sense.
Q. Yep.

A. And then there was testimony as I note in paragraph 54 about potential kind of makeup losses, which I guess you could consider some kind of prior period adjustment. But in -- with an unrelated market not related to New York. So there's testimony that -- there's general testimony and then there's specific testimony.
Q. About consideration of prior period adjustments?
A. Yes.
Q. Okay. Got it. We're on the same page.
A. Okay.
Q. The period of time --
A. Uh-huh.
Q. -- that you looked at for rate setting procedures --
A. Uh-huh.
Q. -- goes from 2013 to 2021; right?
A. Yes. Broadly, yes.
Q. Broadly?
A. Yeah.
Q. Did you do any analysis of what other ESCOs charged in New York during that same time period?
A. No.
Q. Okay. So you don't know how XOOM's rates

compared to other ESCOs rates?
A. For purposes of this we never made a comparison.
Q. And you don't know if XOOM's rates were outside of the range of what ESCOs were charging during that time period?
A. No, we didn't look at that. It didn't seem very relevant.
Q. Okay. What was relevant in the, your damage analysis, was how much gross margin XOOM sought on top of its supply costs; right?
MR. WITTELS: Objection.
A. Can you repeat that, again.
Q. Yep. What you believed was relevant in your damage calculations was how much gross margin XOOM sought on top of its supply costs?
MR. WITTELS: Objection.
A. I mean, that's a way that -- I think you're putting a characterization of it. I think what really the -- you're characterizing it -- one might characterize it that way, but the, you know, as, as discussed, the, you know, what's important is the relationship between rates and, and supply costs. If you want to characterize that as being a gross margin calculation, I think you could formulate it that way,

which is I think what you're doing. But I think you understand what we did.
Q. I am, because I'm focusing in my question, I have built this in on your damage calculation. So I understand your position about bullet 3, let's call it. Which is your opinions about whether or not XOOM's rate setting was consistent or not, with the sale agreement.
But I'm talking about with respect to 4, after you concluded --
A. Uh-huh.
Q. -- the rate was not consistent --
A. Right.
Q. -- that your damage model --
A. Right.
Q. -- and what they considered relevant was the amount of gross margin that XOOM put on top of its supply cost?
A. Are we discussing the Method 1 model or the Method 2 model?
Q. Well, it's both; right?
A. Well, it's --
Q. Let's start with Method 1.
A. Okay. Right.
Q. Right. Method 1, what was relevant was the

amount of gross margin that's input on top of its supply costs; right?
MR. WITTELS: Objection.
A. Of the difference -- if you want to -- you're expressing that as a form -- you're expressing the delta, the difference, right, as a gross margin. That's not exactly how it was calculated.
I mean, it was calculated just as there's differences, not any -- you're saying a gross margin on a gross margin calc -- I want to be specific about how you're using the term "gross margin."
Q. I didn't think it was tricky. I mean, your report says that you calculated by reference -- by comparing XOOM's margin reports to XOOM's rate setting workbooks; right?
A. Right. I was getting to the delta between rates and costs.
Q. Okay.
A. It's just that it was in the margin setting workbooks.
Q. So with respect to Model 1 the relevant consideration was the delta between XOOM's total costs and XOOM's margin?
MR. WITTELS: Objection.

A. The -- between total cost and the rate.
Q. Okay. Which is the margin?
MR. WITTELS: Object.
A. The rate is not the margin.
Q. No, I know.
A. A rate is not a margin.
Q. The delta is. The delta is.
A. Okay. We can call that a margin, yes.
Q. The delta between the total costs --
A. Right.
Q. -- and the rate is --
A. Right.
Q. -- the margin; right?
A. That -- that -- you can characterize that as a margin.
Q. Well, what would you characterize it?
A. I would just characterize it as a difference, as a delta.
Q. Okay. You're not offering an opinion in this case that under the sales agreement XOOM could not charge more than the regulated utilities rate; right?
A. No. I mean, the comparison I made was between supply costs and the rate under this contract.
Q. Right. And you're not offering a damage model

that compares XOOM's variable rate charges to what customers would have been charged by the utility during the same time period?
MR. WITTELS: Objection.
A. No. The damage models as we discussed are the two.
Q. Right. And you don't intend to offer an opinion about that?
A. No. The only thing we used was a, as a graphical comparison on the relationship between supply costs and the utility rate, as an example. But the two models are the two models.
Q. Yep. Okay. Are you offering an opinion about what is a reasonable or appropriate margin for an ESCO to charge?
A. Well, to build the second model we needed an estimate of a margin. We really didn't have any information that would allow that to be created, since XOOM had, from what we can tell, had never done it that way. They had never tried to calculate a, or they did not present in any way, I can't say that they never tried. They did not present in the rate setting workbooks and other information calculations of any sort like that. So we used the margin from fixed rate

customers as a proxy of a rate that XOOM itself had used. I can't go further than that because there's no information.

MR. MATTHEWS: Can you read my question back, please.

(Prior testimony read back.)

"Are you offering an opinion about what is a reasonable or appropriate margin for an ESCO to charge?"

A. Yeah. Conceptually, yes. Conceptually, yes. Thanks for reading that back.

Q. That's okay. And what is the opinion that you're offering conceptually about that?

A. Well, I mean, it's obviously related to the contract that we've been discussing, whether it's based on supply costs, that, you know, if the Court were to decide that a margin was allowed, that it can't be an uncapped margin, that's why we made a second calculation using the fixed rate margin as a proxy of what might be an acceptable margin.

Q. Are you offering any opinion about what is an acceptable or appropriate, a reasonable margin aside from just using XOOM's fixed rate margin?

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A. We haven't offered that opinion, we don't have any information to do that.

Q. Do you intend to?

A. If information were to be provided, but that would have to come from XOOM. So I, in the absence of not expecting anymore information to come, no.

Q. Well, we've gotten talking past each other again. I'm talking conceptually. You've said that it will be for the Court to decide whether a margin can be charged and if so what's appropriate; right?

A. Right.

Q. And if we go to trial --

A. Uh-huh.

Q. -- and you take the witness stand --

A. Uh-huh.

Q. -- and I'm asking you questions and the judge gets frustrated with my questions and says, "let's cut to the chase. Mr. Adamson, what do you think is an appropriate margin for an ESCO to charge?" What would your answer be?

MR. WITTELS: Objection.

A. I would say conceptually it's got to be related to the, related to the costs. And in a broad conceptual basis.

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Q. And if he said, "but can you give me a cutoff point? Is there a number that you can assign to that?" Would you be able to give him one?

MR. WITTELS: Objection.

A. I wouldn't be able to give him a number on the stand because I wouldn't have the, XOOM's internal information, no.

Q. Okay. So the margin in your view, --

A. Uh-huh.

Q. -- the margin that is appropriate for an ESCO to charge conceptually --

A. Uh-huh.

Q. -- is ESCO specific?

A. Well, again, we're talking about relation to a specific contract, so.

Q. I'm not.

A. You're not.

MR. WITTELS: Don't interrupt him.

A. I am talking -- sorry. I'm talking about this specific contract. Other ESCOs may have, and I'm sure do, very different contractual forms. And in fact, ESCOs -- even the same ESCO will have lots, may have different pricing, right, under different arrangements. We're talking about variable rate pricing here as

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opposed to fixed rate pricing.

Q. Uh-huh.

A. Fixed rate pricing, I think we can all agree, the actual outturn margins could be quite different. A lot depends on timing in that case; right? Okay. So I don't know that there is a "single ESCO number" I don't think that's a meaningful concept.

Q. Okay. Is there a single ESCO number for variable rates that in your opinion would be a cap on what is an appropriate or reasonable margin?

A. I don't have a number in mind because I don't know what the, what would be claimed to be the types of, of costs that, to be recovered in that margin. What I don't -- you know, I don't have a number. What I am offering is conceptually that the margin has to be based on something from reality to be meaningful in the context of this contract, and, you know, can't be arbitrary.

Q. Okay.

A. But I don't have a number to give you.

Q. Okay. And would not be able to create one?

MR. WITTELS: Objection.

A. Not -- not on the information available right now. I think that would need more inputs than are

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available at present.
Q. Okay. You don't have an industrywide opinion about what is an appropriate or a reasonable margin that an ESCO can charge on a variable rate?
MR. WITTELS: Objection.
A. I mean, I probably have a, a rough sense of maybe what I would expect roughly the numbers to work out about. But, you know -- you know, based on, you know, what I -- just a sense of that. I don't have a precise number to give you here.
Q. What -- what are the rough numbers that you referred to?
A. You know, I would be -- I would be -- I wouldn't be surprised, having done calculations that, you know, you got a number, 15 percent, 20 percent, something like that. I mean, you know, here we use the fixed rate one and it came out those were on average about 20 percent. That -- that is an indicator.
Q. Okay.
MR. MATTHEWS: Can we go off the record.
VIDEOGRAPHER: The time is 12:00 p.m., we are going off the record.
(Short break taken.)
VIDEOGRAPHER: We back on the record, the

time is 12:14.
Q. Mr. Adamson, let's talk about your damage models which relates to the fourth bullet point of your assignment --
A. Uh-huh.
Q. -- to develop a damage model.
A. Uh-huh.
Q. And you and Dr. Eryilmaz --
A. Eryilmaz.
Q. -- developed two models; --
A. Yes.
Q. -- right?
Okay. So Model 1 is described starting on page 20 under Section 3.1.
A. Uh-huh.
Q. Right?
A. Yes.
Q. So here the total costs that are referenced here, again, is the supply cost build up contained in the rate setting workbooks; right?
A. Yes, I believe that's what it says, yes.
Q. All right. And as you described earlier, Model 1 takes the difference between those total costs and the variable rate that XOOM charged?

MR. ROMAN: Sorry if I'm interrupting. But we can't hear anything for people remotely right now. I don't know if we're on the record or talking, but I can't hear anything.
MR. WITTELS: We're on the record. Can you hear?
(Pause for technical issue.)
MR. ROMAN: I just heard Matt. That's good. Thank you.
(Pause for technical issue.)
A. Can you --
Q. Yeah.
MR. MATTHEWS: May I ask you to read that back.
(Prior testimony read back.)
"All right. And as you described earlier, Model 1 takes the difference between those total costs and the variable rate that XOOM charged?"
A. Yes.
MR. WITTELS: Yeah. Objection.
A. Broadly, yes.

Q. And the third dataset that is relevant to the calculation under Model 1 is customer usage; right?
A. Yes, they're quantities, yes.
Q. So you take customer usage and multiply that by supply costs; right?
A. Okay.
Q. And then you take customer usage and multiply that by the rates; right?
A. Are you continuing --
Q. Is that correct so far?
A. I'm trying to remember exactly how it was implemented. It may have just been -- it may have -- it may have been implemented as the difference in the rates times the quantity.
Q. Okay. Got it.
A. I think we're talking about --
Q. We're saying the same thing.
A. -- the same general -- I think we're talking about the same general thing.
Q. The -- we're saying the same thing.
In other words, it's looking at calculating everything XOOM charged above total costs.
A. Yeah. Yeah, above the, the supply costs, total costs, the delta times quantities.

Q. And -- okay. And I appreciate. I probably shouldn't use your defined term "total costs" because the supply costs doesn't include certain fixed costs; right? The supply costs that are set forth in the rate setting workbook.
A. I mean, the -- the total costs includes -- I mean, I -- what was reported as the things that sum up the total costs, yes.
Q. That sum up to the total of the supply costs; right?
A. Yeah. I think in the rate setting workbooks the column is labeled Total Cost, as I remember.
Q. Got it. But it doesn't include supply costs, and the total cost that's listed in the rate setting workbook doesn't include things like overhead and taxes and marketing costs. Those sorts of costs; right?
MR. WITTELS: Objection.
A. Sorry. I think your question may have had multiple parts. The total cost -- the total costs in the rate setting workbooks had a bunch of columns.
Q. Uh-huh.
A. Right? So is the -- is your question what are those columns?
Q. No. I probably asked a poor question.

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ESCOs generally have supply costs; correct?
A. Yes.
Q. And then ESCOs, in the course of doing, running their business have certain additional costs that are not supply costs; right?
A. If you want to characterize it that way, yes.
Q. Okay. And the Model 1 calculation --
A. Uh-huh.
Q. -- does not include any costs that are not supply costs; right? The Model 1 calculation only calculates supply costs?
MR. WITTELS: That's two questions. Objection.
A. The Model 1 calculation uses, uses the supply costs represented by the total cost. As I understand your question you're saying did, for example, was, in the, in XOOM's reported total costs did it have these other elements he raised.

And I was trying to refer to to kind of purposes of clarity to say the rate setting workbook total costs that we saw -- well, I mean, they are what they are. That is XOOM's reported numbers. It didn't mention marketing costs. I think you mentioned that as a thing. So supply costs, yes. So we made a comparison with

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supply costs based on total costs.
Q. The Total Cost column in the rate setting workbook?
A. Yes.
Q. Okay. And do you understand the Total Cost column in the rate setting workbook to include overhead costs?
A. Not as -- not as described. Not -- not as obviously described in the rate setting workbooks that I saw.
Q. Okay. Do you understand it to include taxes that XOOM pays?
A. Are we talking about corporate taxes or are we talking about taxes on, involving energy purchases or something?
Q. Corporate taxes.
A. Like, corporate income taxes?
Q. Yes.
A. Not that I see. Not that I saw.
Q. And do you understand it to include rent?
A. Like, facilities rent?
Q. Yes, sir.
A. There -- there was not a column for that, no.
Q. Okay. And do you understand it to include other

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acquisition costs of acquiring customers?
A. If they -- that was not a broken out category.
Q. Okay. So in a nutshell under Model 1 you're calculating all of the gross margin that XOOM obtained from those customers?
MR. WITTELS: Objection.
Can you repeat that question.
(Prior testimony read back.)
"So in a nutshell under Model 1 you're calculating all of the gross margin that XOOM obtained from those customers?"
A. I mean, we're calculating the difference between total costs and rates times quantities. I think that's the calculation.
Q. Yeah. Okay. But under this model XOOM doesn't get to make any margin; correct?
A. Unless it was built into the total cost that they reported.
Q. In the rate setting workbook?
A. In the rate setting workbooks.
Q. Okay. XOOM's a for profit business; right? You understand that?
A. Yes.

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Q. And they operate in a deregulated competitive market in New York; right?
A. Deregulated in some sense. I mean --
Q. Right.
A. -- retail electricity rates are not completely -- they're still subject to regulation.
Q. Agreed.
A. Right.
Q. But -- but a competitive rate is what an ESCO is allowed to charge as opposed to a rate set by a regulator; --
MR. WITTELS: Objection.
Q. -- right?
MR. WITTELS: Objection.
A. Well, I think you would need to be precise about the statement. The -- that would depend on the what and when.
Q. Okay. But we can agree at least that XOOM is a for profit business operating in a competitive market?
MR. WITTELS: Objection.
A. XOOM is definitely a for profit business. I mean, it's not subject to perfect competition in an economic sense. Which would be a quite different set of criteria. I think in the, as you're broadly

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characterizing it, I agree with you in -- in -- in casual terms.
Q. Okay. Why doesn't XOOM get to make any profit under Model 1?
A. The question is is whether XOOM gets to charge the rates it agreed to under the contract. That's why I used the example earlier, I can enter into -- I enter into a contract, I sort of live or die by that contract; right?
I mean, we've all entered in, probably in our lives entered into contracts for things that ended up costing to fulfill more than, than what we made. I used the example of the building rehabilitation.
The real question to me is consistency with the contract. Did they not make money at those rates? I don't know. That's -- they don't report, as far as I've seen, information on a contract-by-contract basis. But the, you know, the question is around consistency with the -- with the -- with the contract they signed here.
Q. In your opinion that contract only allows XOOM to charge its supply costs?
A. Yeah. I mean, that's what -- that's what we already discussed around the reading of supply costs, and as you said, you know, supply costs it's total

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costs, that's what we use for Model 1. That's what XOOM -- that's the data XOOM provided to the Court.
Q. Okay. Model 1, based on that calculation, would actually result in XOOM losing money; right?
A. Is that out of your hypothesis, or?
Q. It's a question.
A. I don't know.
Q. You don't know?
A. The -- I mean, we don't have -- we haven't seen any P & L by contract.
Q. Conceptually --
A. Uh-huh.
Q. -- Model 1 says XOOM can charge no more --
A. Uh-huh.
Q. -- than its reported supply costs in the rate setting workbooks; right?
A. Uh-huh.
Q. That's what Model 1 measures; right?
A. Yeah, broadly. Yes.
Q. So at best --
A. Uh-huh.
Q. -- Model 1 makes XOOM profit neutral; right?
A. If you assume that their actual -- I think under your construction you're saying under your, under your

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construction you're saying under the -- under the scenario that their reported total costs was equal to their actual marginal supply costs, broadly, yes, I agree.
Q. Okay. In actuality, because as we discussed XOOM and every other ESCO has certain fixed costs in addition to its supply costs, Model 1 would result in XOOM losing money; --
MR. WITTELS: Objection.
Q. -- right?
MR. WITTELS: Objection.
A. Losing money on, as a whole or on that specific contract? Just for point of clarification.
Q. Under that calculation, on that contract.
A. On that contract?
Q. Yes.
A. Probably, yes. But, you know, businesses have many -- have many, many activities where they don't make a profit on that particular activity. I mean, Google offers me a Gmail account and I'm not paying for it, they have huge fixed costs of implementing that.
Q. I'm just -- I want to understand your -- this is your opinion. Right?
A. I know my opinion.

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Q. And so I'm not at this point even arguing with you about it. I just want to understand it.
A. Uh-huh.
Q. You've said that under Model 1 --
A. Right.
Q. -- anything above, --
A. Uh-huh.
Q. -- anything charged by XOOM above the supply costs reported in the rate setting workbook is a damage; right?
A. Yes.
Q. And that -- under that model --
A. Uh-huh.
Q. -- for those customers who were charged variable rates by XOOM over the relative time period, XOOM would lose money --
MR. WITTELS: Objection.
Q. -- for those customers in that contract language?
MR. WITTELS: Asked and answered. Objection.
A. Possibly. I don't think that's the question in front of us. As I said, I mean, the question is consistency with the contractual language.
Q. Right.

A. You said -- as you said yourself, they provided their supply costs. What's the difference with supply costs?
Q. I -- I don't know why this is difficult. Like, the calculation isn't even difficult. I'm bad at math and I can do this one. It's anything above the reported supply cost is a damage under Model 1; --
A. Yes.
Q. -- correct?
A. Yes.
Q. Even if anything above that reported supply cost included certain fixed costs, that if they weren't reported in the rate setting workbooks it is a damage under Model 1?
MR. WITTELS: Objection.
A. That is how the calculus -- that's how the calculations go through, because that's how XOOM reported its total costs, yes.
Q. And that is because your reading of the contract is that XOOM can charge no more than the reported total costs?
A. Since we went through this morning, it depends on how you read supply costs. I read supply costs as, you know, costs directly related to supply. XOOM reported

this information back that we made the calculation on around their costs.
Q. Let me see if I can go at it a different way.
Model 1 in your opinion accurately measures the damages --
A. Uh-huh.
Q. -- flowing from what you believe is XOOM's failure to set variable rates consistent with the contract language?
A. Yes.
Q. And let's see. Paragraph 72 to your report.
A. Just give me one second to flip to the page.
MR. WITTELS: 72?
A. Uh-huh. Okay.
Q. Calculates the difference between XOOM's reported supply costs and the rate that the regulated utility charged; correct?
A. No. I don't think you said that right.
Q. Okay. What -- what does that calculate in paragraph 72?
A. Well, the second sentence talks about XOOM's total costs and the thing we just discussed; right?
As we -- as I indicate here we also did a, you know, just a kind of a crosscheck calculation to see if

it's in the same, you know, in the same order of magnitude and just crosschecked it again to what XOOM had reported the applicable utility rates to be. You know, they're generally similar. So if you were to take the deltas, not against XOOM's total cost but against the utility rates, then you get 49 million, not 55 million.
Q. How is that different from what I asked?
A. You said, as I remember, this compares the, the total cost to the -- I'm not exactly sure what you said, but I think it had some consistency with that. If you want to read it back.
Q. It's okay. The first sentence of 72 --
A. Uh-huh.
Q. -- calculates the difference between XOOM's reported supply costs --
A. Uh-huh.
Q. -- and the rate that the utility charged?
A. Yes.
Q. Okay. And the utility in New York is required to be profit neutral; right?
A. Well, you -- the utilities in New York are actually investor owned, most of them are investor owned utilities, so they're not, they are not nonprofit

A. Well, in a sense, yes, because the, you know -- well, first off, the fix rate is used as, you know, a way of coming up with a reasonable margin that, based on what XOOM itself set rates on. You know, it's not -- it's based on the information available.
So one question then comes to, you know, are, is there some reason that, that XOOM would need to charge a higher rate on fixed rate customers? If so I don't really see what it is.
MR. WITTELS: Variable.
A. Sorry. On variable rate customers. I am -- we don't have any information to, to delve into that.
Q. I'm asking conceptually. And it's okay if you are not offering this opinion. I'm not saying you should or you shouldn't be. I just want to know in this case are you going to offer an opinion that it is not fair for XOOM to seek a higher margin on variable rates conceptually than it does on fixed rates?
A. In this context, yes. Because there is no XOOM provided despite all of the information about how those methods were set of how these margins came up. How these -- how the variable rate margins were determined and that's a reasonable proxy, yes.
Q. Are you offering that opinion more broadly, that

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in all circumstances -- and I'm asking this, to give you some prospective on why I'm asking, because you've done it in two cases now that I know of, set the fixed rate margin as a benchmark.
A. Uh-huh.
Q. So are you going to offer the opinion that in the ESCO world --
A. Uh-huh.
Q. -- it is not appropriate for an ESCO to seek a higher margin for variable rates than it does for fixed rates?
MR. WITTELS: Objection.
A. I mean, to me the rates have to be set for the contract. The -- the use of fixed rates seemed appropriate for coming up with the reasonable proxy given that, you know, the, the risks associated with the variable rates in general would be similar or probably lower. If you say that there are other fixed costs it's hard to see why they are different. We never saw anything in this case saying, demonstrating why there would be a difference between the two. If someone could present, you know, compelling economic evidence that says, "by God, I can prove to you that the costs of variable rate is completely different than fixed rate"

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that might be a thing. But we -- we haven't seen that here. It was asked, but we haven't seen it.
Q. Who asked?
A. Well, the discovery request asked for costs and pricing methodologies and stuff.
Q. Paragraph 75. It says -- this is towards the bottom, I suppose it's the last sentence.
"It appears that XOOM was able to operate and make a reasonable profit selling fixed rate contracts with substantially lower margins than variable contracts, and yet arbitrarily imposed much higher margins on their variable rate customers?"
Do you see that?
A. Yes.
Q. Where does it appear that XOOM was able to operate and make a reasonable profit selling fixed rate contracts with substantially lower margins?
A. Well, the margins you can kind of see in the table, the average margins over years. As I say, it appears that they chose to offer those fixed rate margins over a considerable period of time.
Q. Uh-huh.
A. So they would have had -- XOOM would have had the opportunity to offer if it was saying, "oh, my God,

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we're losing tons of money on all of our variable customers -- I mean, our fixed rate plans that could have been adjusted."
But we don't -- as I mentioned before we don't have contract by contract P & Ls, for example.
Q. Right. So I think we're saying the same thing. Your table 1 reflects gross margin for fixed rate customers; right?
A. Yes.
Q. Okay.
A. I think so, yes.
Q. But you don't know whether --
VIDEOGRAPHER: I'm sorry. I didn't hear that. You're hitting the microphone.
A. Oh, I'm sorry.
VIDEOGRAPHER: Bring it up a little higher.
A. How is that? Is that better?
VIDEOGRAPHER: Great. Thank you.
A. Okay. Thank you. Sorry.
Q. That's okay. But you don't know if XOOM actually made a net profit on those same customers?
A. No, we don't have -- we don't have customer segment level profit and loss data.
Q. Okay. In the -- circling back to the Richards

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Q. I'm with you. But my question is about the margin.
A. Yeah. The potential margin?
Q. Yeah. That you included a --
A. Uh-huh.
Q. -- potential margin in the Complaint.
A. Right. Right.
Q. And in this Market Supply Cost Build Up that was an attachment to the --
A. Right.
Q. -- Complaint; right?
A. Yes.
Q. But you do not include a margin in Model 1; correct?
A. No, that's in Model 2.
Q. Okay. And you did not include it in Model 1 because in your view the contract language does not state that it should be included?
A. Yes.
Q. So why did you include it in the Complaint?
A. Well, again, these were numbers built up with no data. And, you know, we presented kind of with and without. Like -- Like I actually do in Model 1 and Model 2.

Q. But I'm just talking about the margin. The inclusion of the margin in the Market Cost Build Up, why did you include margin in the Market Cost Build Up? You had the contract language at that time.
A. We had the contract language but nothing else. Nothing about the process, nothing about how they had done it. I mean, I think that was pre, certainly pre, I ever saw, any of the deposition or any of the analysis -- discovery analysis; right?
Q. Yeah, but you -- you told me that the reason it's not included in Model 1, the reason the margin is not included in Model 1, is because of the contract language; --
A. Right.
Q. -- right?
So if that's the case and you had the contract language when the Complaint was filed, why did you include margin in this Market Cost Build Up?
A. This is -- I mean, as an example, like I said, we presented kind of both ways. It's got total with and total without. I mean, it's pretty comparable to me how we present it in the report with the two models. Maybe I'm missing your point.
Q. That's okay. Because the -- the table that's

included in paragraph 54, the column that says, Difference in Percentage.
A. Uh-huh.
Q. That factors in margin; right?
A. Yep. Yes. I think so. Because it looks like -- well, actually -- that's a good question because this actually refers to the table at the bottom. I -- I think so. I mean, I don't think it's possible to see exactly on here.
Q. Okay --
A. Because there is, like, a period interpolation on here.
Q. So just looking at 54.
A. Uh-huh.
Q. Footnote 27, do you see that in the table?
A. Yep. Okay. Yep. I see that.
Q. And Footnote 27 says that that adds percent margin; right?
A. That adds the 1.3 cents. Yes, I agree with you.
Q. Okay. Did you review the Complaint that is Exhibit 5 before it was filed?
A. No, I don't think so. I don't remember it.
Q. Okay. Do you think that 13.67 percent margin is a generous or substantial margin for an ESCO, generally

speaking?
A. Almost 14 percent, I mean, it's not immaterial.
Q. Okay.
A. I don't know, I didn't write the word "generous."
Q. Those aren't your words?
A. No.
Q. Okay. Do you recall the graph in Mr. Coleman's rebuttal report that shows gross margin for certain companies in the Dow Jones?
A. Oh, the thing at the back?
Q. Yes.
A. Yes. Is it possible we can flip to that?
Q. Yes.
A. Tell me what page it is. Sorry.
Q. It's at page 13.
A. Oh, okay.
Q. Yes?
A. Okay.
Q. Do you have an opinion about which of these are unreasonable gross margins, if any?
A. I mean, I --
MR. WITTELS: Object. Objection.
A. I mean, as I understand it these are a summary of things he got from Yahoo; right? So these are

their retail business.
Q. Okay. Well, I guess --
A. For example, a bunch of the Texas companies have retail supply businesses. We did a little bit on that, but not a major thing. But a bunch of the Texas companies had retail supply businesses that also had substantial other businesses.
Q. I think I understand what you're saying. And you didn't work for the retail side of their businesses, you worked for the other side of their businesses?
A. Or sometimes we would be hired on some kind of corporate strategy type engagement, which might be pretty broad.
Q. Got it. Okay. I thank you for your time and your patience with me.
MR. MATTHEWS: I'll pass the witness.
A. Thank you.
Q. Yes, sir.

EXAMINATION

BY MR. WITTELS:
Q. Mr. Adamson, I just really have one question for you. You were asked by counsel for XOOM about whether

the company was able to make any profits on its fixed rate customers; do you remember that question?
A. Yeah. Not in exact wording, but I remember the question.
Q. Yeah. And did you ask me to, whether you could go back and review your report when we had a break?
A. Yeah, well -- yes, we were discussing the report.
Q. And did you reread paragraph 57?
A. Yes.
Q. And does that answer the question of whether XOOM made money and was profitable on its fixed rate customers?
MR. MATTHEWS: Objection. Leading.
A. Well, I just -- it just reminded me there was a -- I had said that there was not a specific P&L, this was a reference in the report to deposition testimony from a XOOM witness about the profitability of this.
Q. And what did your report find and state?
A. I don't remember exactly how he worded it. I think there had been a, in the deposition there was a question about, it was around, I don't have the transcript in front of me, of course, of the deposition, but it was something around the line of were -- were a fixed rate -- were fixed rate customers profitable for

XOOM or some broad question.
Q. And the answer was?
A. I believe he said yes, they were, they were both profitable. Both fixed rate and variable rate were profitable.
Q. Okay. I have no further questions at this time. Thanks.
MR. MATTHEWS: Thanks very much.
A. Thank you.
VIDEOGRAPHER: The time is 2:39, we are off the record.
COURT REPORTER: And, Mr. Matthews, your order?
MR. MATTHEWS: My order is an expedited transcript, just, I don't need any print copies. Electronic only. PDF exhibits.
COURT REPORTER: Expedite by Friday?
MR. MATTHEWS: Yes.
(Whereupon, the deposition concluded at approximately 2:39 p.m.)

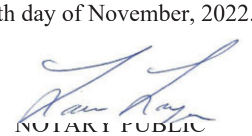
CERTIFICATE

COMMONWEALTH OF MASSACHUSETTS
SUFFOLK, ss.

I, Laurie Langer, Registered Professional Reporter and Notary Public in and for the Commonwealth of Massachusetts, do hereby certify that the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.

I further certify that I am neither related to or employed by any of the parties in or counsel to this action, nor am I financially interested in the outcome of this action.

In witness whereof, I have hereunto set my hand and seal this 11th day of November, 2022.



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